

103^D CONGRESS
1ST SESSION

S. 1781

To make improvements in the Black Lung Benefits Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 22, 1993

Mr. SIMON (for himself, Mr. WOFFORD, Mr. ROBB, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To make improvements in the Black Lung Benefits Act,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Black Lung Benefits Restoration Act”.

6 (b) **REFERENCE.**—Whenever in this Act (other than
7 section 9(a) (1), 10, 11, or 12) an amendment or repeal
8 is expressed in terms of an amendment to, or repeal of,
9 a section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the
2 Black Lung Benefits Act (30 U.S.C. 901 et seq.).

3 **SEC. 2. BENEFIT OVERPAYMENT.**

4 Part C is amended by adding at the end the following:

5 “SEC. 436. (a) The repayment of benefits paid on
6 a claim filed under this part before the final adjudication
7 of the claim shall not be required if the claim was finally
8 denied, unless fraud or deception was used to procure the
9 payment of such benefits.

10 “(b) The trust fund shall refund any payments made
11 to it as a reimbursement of benefits paid on a claim filed
12 under this part before the final adjudication of the claim,
13 unless fraud or deception was used to procure the payment
14 of such benefits.

15 “(c) The trust fund shall reimburse an operator for
16 any benefits paid on a claim filed under this part before
17 the final adjudication of the claim if the claim was finally
18 denied.

19 “(d) If on a claim for benefits filed under this part—

20 “(1) the Secretary makes an initial determina-
21 tion—

22 “(A) of eligibility; or

23 “(B) that particular medical benefits are
24 payable; or

25 “(2) an award of benefits is made,

1 the operator found to be the responsible operator under
2 section 422(h) shall, within 30 days of the date of such
3 determination or award, commence the payment of month-
4 ly benefits accruing thereafter and of medical benefits that
5 have been found payable. If an operator fails to timely
6 make any payment required by an initial determination
7 or by an award, such determination or award shall be con-
8 sidered final as of the date of its issuance.”.

9 **SEC. 3. EVIDENCE.**

10 Section 422 (30 U.S.C. 932) is amended by adding
11 at the end the following:

12 “(m)(1)(A) During the course of all proceedings on
13 a claim for benefits under this part, the results of not
14 more than 3 medical examinations and 3 interpretations
15 of chest roentgenograms offered by the claimant may be
16 received as evidence to support eligibility for benefits.

17 “(B) During the course of all proceedings on a claim
18 for benefits under this part, the responsible operator or
19 the trust fund—

20 “(i) may require, at no expense to the claimant,
21 that the claimant undergo certain medical examina-
22 tions, but the responsible operator or trust fund may
23 not submit or require more medical examinations
24 than are conducted and submitted during the course
25 of all proceedings by the claimant; and

1 “(ii) may offer into evidence the set of results
2 of one chest roentgenogram for each set of chest
3 roentgenogram results that are offered into evidence
4 by the claimant.

5 “(C) An administrative law judge may require the
6 miner to submit to a medical examination by a physician
7 assigned by the District Director if the administrative law
8 judge determines that, at any time, there is good cause
9 for requiring such examination. For purposes of this sub-
10 paragraph, good cause shall exist only when the adminis-
11 trative law judge is unable to determine from existing evi-
12 dence whether the claimant is entitled to benefits.

13 “(D) The complete pulmonary evaluation provided
14 each miner under section 413(b) and any consultative
15 evaluation developed by the District Director shall be re-
16 ceived into evidence notwithstanding subparagraph (A) or
17 (B).

18 “(E) Any record of—

19 “(i) hospitalization for a pulmonary or related
20 disease;

21 “(ii) medical treatment for a pulmonary or re-
22 lated disease; and

23 “(iii) a biopsy or an autopsy,
24 may be received into evidence notwithstanding subpara-
25 graph (A) or (B).

1 “(2) In addition to the medical examinations author-
2 ized by paragraph (1), each party may submit not more
3 than one interpretive medical opinion whether presented
4 as documentary evidence or in oral testimony. Such medi-
5 cal opinion may review other evidence derived from chest
6 roentgenograms, blood gas studies, or pulmonary function
7 studies contained in the reports offered under this sub-
8 section.

9 “(3) A request for modification of a denied claim
10 under section 22 of the Longshore and Harbor Workers’
11 Compensation Act, as made applicable to this Act by sub-
12 section (a) of this section, shall be considered as if it were
13 a new claim for the purpose of applying the limitations
14 prescribed by paragraphs (1) and (2).

15 “(4) The opinion of a miner’s treating physician, if
16 offered in accordance with paragraph (1)(A), shall be
17 given substantial weight over the opinion of other physi-
18 cians in determining the claimant’s eligibility for benefits
19 if the treating physician is board-certified in a specialty
20 relevant to the diagnosis of total disability or death due
21 to pneumoconiosis.

22 “(5) For purposes of this subsection, a medical exam-
23 ination consists of a physical examination and all appro-
24 priate clinical studies (not including a biopsy or an au-

1 topsy) related to the diagnosis of total disability or death
2 due to pneumoconiosis.”.

3 **SEC. 4. SURVIVOR BENEFITS.**

4 (a) DEATH.—Section 422 (30 U.S.C. 932), as
5 amended by section 3, is amended by adding at the end
6 the following:

7 “(n) If an eligible survivor files a claim for benefits
8 under this part and if the miner—

9 “(1) was receiving benefits for pneumoconiosis
10 pursuant to a final adjudication under this part; or

11 “(2) was totally disabled by pneumoconiosis at
12 the time of the miner’s death,

13 the miner’s death shall be considered to have occurred as
14 a result of the pneumoconiosis, unless the miner’s death
15 was the result of an event that had no medical connection
16 with the pneumoconiosis.”.

17 (b) RULES FOR WIDOWS AND WIDOWERS.—Section
18 422 (30 U.S.C. 932), as amended by subsection (a), is
19 amended by adding at the end the following:

20 “(o)(1) A widow or widower of a miner who was mar-
21 ried to the miner for less than 9 months at any time pre-
22 ceding the miner’s death is not qualified to receive survi-
23 vor benefits under this part unless the widow or widower
24 was the natural or adoptive parent of the miner’s child.

1 “(2) The widow or widower of a miner is disqualified
2 to receive survivor benefits under this part if the widow
3 or widower remarries before attaining the age of 50.

4 “(3) A widow or widower may not receive an aug-
5 mentation in survivor benefits on any basis arising out of
6 a remarriage of the widow or widower.”.

7 **SEC. 5. RESPONSIBLE OPERATOR.**

8 Section 422(h) (30 U.S.C. 932(h)) is amended by in-
9 serting “(1)” after “(h)” and by adding at the end the
10 following:

11 “(2)(A) Prior to issuing an initial determination of
12 eligibility, the Secretary shall, after investigation, notice,
13 and a hearing as provided in section 19 of the Longshore
14 and Harbor Workers’ Compensation Act, as made applica-
15 ble to this Act by subsection (a) of this section, determine
16 whether any operator meets the Secretary’s criteria for li-
17 ability as a responsible operator under this Act. If a hear-
18 ing is timely requested on the liability issue, the decision
19 of the administrative law judge conducting the hearing
20 shall be issued not later than 120 days after such request
21 and shall not be subject to further appellate review.

22 “(B) If the administrative law judge determines that
23 an operator’s request for a hearing on the liability issue
24 was made without reasonable grounds, the administrative

1 law judge may assess the operator for the costs of the pro-
2 ceeding (not to exceed \$750).”.

3 **SEC. 6. ATTORNEY FEES.**

4 (a) ELIGIBILITY FOR FEES.—Section 422 (30 U.S.C.
5 932), as amended by section 4(b), is amended by adding
6 at the end the following:

7 “(p)(1) If in any administrative or judicial proceeding
8 on a claim for benefits a determination is made that a
9 claimant is entitled to such benefits, the claimant shall
10 be entitled to receive all reasonable costs and expenses (in-
11 cluding expert witness and attorney’s fees) incurred by the
12 claimant in such proceeding and in any other administra-
13 tive or judicial proceeding on such claim occurring before
14 such proceeding.

15 “(2) In the case of a proceeding held with respect
16 to such claim—

17 “(A) the person or Board that made the deter-
18 mination that the claimant is entitled to benefits in
19 an administrative proceeding and any other person
20 or Board that made a prior determination in an ad-
21 ministrative proceeding on such claim; or

22 “(B) the court in the case of a judicial proceed-
23 ing,

24 shall determine the amount of all costs and expenses (in-
25 cluding expert witness and attorney’s fees) incurred by the

1 claimant in connection with any such proceeding and shall
2 assess the operator responsible to the claimant for such
3 costs and expenses that are reasonable or if there is not
4 an operator responsible to the claimant, shall assess the
5 fund for such costs and expenses.

6 “(3) The determination of such costs and expenses
7 shall be made within 60 days of the date the claimant sub-
8 mits a petition for the payment of such costs and expenses
9 to a person, the Board, or court that made a determina-
10 tion on the claimant’s claim. The person, Board, or court
11 receiving such petition shall take such action as may be
12 necessary to assure that such costs and expenses are paid
13 within 45 days of the date of the determination of such
14 costs and expenses unless a motion to reconsider—

15 “(A) the amount of such costs and expenses; or

16 “(B) the person liable for the payment of such
17 amount,
18 is pending.

19 “(4) If an operator pays costs and expenses assessed
20 under paragraph (1) and if the claimant for whom such
21 costs and expenses were paid is determined in a later pro-
22 ceeding not to be eligible for benefits under this part, the
23 fund shall pay the operator the amount paid for such costs
24 and expenses.

1 “(5) Section 28(e) of the Longshore and Harbor
2 Workers’ Compensation Act shall apply with respect to
3 any person who receives costs and expenses that are paid
4 under this subsection on account of services rendered a
5 claimant.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall apply only with respect to claims that
8 are filed for the first time after the date of the enactment
9 of this Act and shall not apply with respect to any claim
10 that is filed before such date and that is refiled under sec-
11 tion 8 of this Act after such date.

12 **SEC. 7. ADMINISTRATION.**

13 (a) APPEALS TO THE BENEFITS REVIEW BOARD.—
14 No appeal of an order in a proceeding under the Black
15 Lung Benefits Act may be made by a claimant or respond-
16 ent to the Benefits Review Board unless such order has
17 been made by an administrative law judge.

18 (b) ACQUIESCENCE.—The Secretary of Labor may
19 not delegate to the Benefits Review Board the authority
20 to refuse to acquiesce in a decision of a Federal court.

21 **SEC. 8. REFILING.**

22 Any claim filed under the Black Lung Benefits Act
23 after January 1, 1982, but before the date of the enact-
24 ment of this Act, may be refiled under such Act after the

1 date of the enactment of this Act for a de novo review
2 on the merits.

3 **SEC. 9. DEFINITIONS.**

4 (a) COKE OVENS.—

5 (1) FEDERAL MINE SAFETY AND HEALTH ACT
6 OF 1977.—Section 3 of the Federal Mine Safety and
7 Health Act of 1977 (30 U.S.C. 802) is amended—

8 (A) in subsection (d), by inserting before
9 the semicolon the following: “or who operates a
10 coke oven or any machine shop or other oper-
11 ation reasonably related to the coke oven”;

12 (B) in subsection (g), by inserting before
13 the semicolon the following: “or working at a
14 coke oven or in any other operation reasonably
15 related to the operation of a coke oven”; and

16 (C) in subsection (h)(2), by inserting be-
17 fore the semicolon the following: “and includes
18 a coke oven and any operation, structure, or
19 area of land reasonably related to the operation
20 of a coke oven”.

21 (2) BLACK LUNG BENEFITS ACT.—The first
22 sentence of section 402(d) (30 U.S.C. 902(d)) is
23 amended by inserting before the period the follow-
24 ing: “or who works or has worked at a coke oven or

1 in any other operation reasonably related to the op-
2 eration of a coke oven”.

3 (b) PNEUMOCONIOSIS.—Section 402(b) (30 U.S.C.
4 902(b)) is amended—

5 (1) by adding after “sequelae” the following:
6 “which disease or sequelae is restrictive or obstruc-
7 tive or both”; and

8 (2) by striking out “coal mine” and inserting in
9 lieu thereof “coal mine or coke oven”.

10 **SEC. 10. BENEFITS REVIEW BOARD.**

11 Section 21(b)(1) of the Longshoremen’s and Harbor
12 Workers’ Compensation Act (33 U.S.C. 921(b)(1)) is
13 amended—

14 (1) by inserting after the first sentence the fol-
15 lowing new sentence: “The Secretary shall appoint
16 and fix the compensation of the Benefits Review
17 Board members without regard to the provisions of
18 title 5, United States Code, governing appointments
19 in the competitive service, and without regard to the
20 provisions of chapter 51 and subchapter III of chap-
21 ter 53, relating to classification and the General
22 Schedule pay rates, and without regard to chapter
23 75, relating to adverse actions.”;

24 (2) in paragraph (5), by striking the sixth sen-
25 tence; and

1 (3) by adding at the end thereof the following
2 new paragraph:

3 “(6) The rate of compensation for members of
4 the Board shall not exceed the daily equivalent of
5 the maximum rate specified in section 5376 of title
6 5, United States Code.”.

7 **SEC. 11. COMPENSATION FOR WORK INJURIES REGULA-**
8 **TIONS.**

9 Section 8149 of title 5, United States Code, is
10 amended—

11 (1) in the second sentence by striking “des-
12 ignated or”; and

13 (2) by inserting after the second sentence the
14 following new sentences: “The Secretary shall ap-
15 point and fix the compensation of the Employee’s
16 Compensation Appeals Board members without re-
17 gard to the provisions of this title, governing ap-
18 pointments in the competitive service, and without
19 regard to the provisions of chapter 51 and sub-
20 chapter III of chapter 53, relating to classification
21 and the General Schedule pay rates, and without re-
22 gard to chapter 75, relating to adverse actions. The
23 rate of compensation for members of the Board shall
24 not exceed the daily equivalent of the maximum rate
25 specified in section 5376.”.

